IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAMES HALL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04-1328-GMS
	)	
DAVID HOLMAN, Deputy Warden	)	
LAWRENCE McGUIGAN, and	)	
Acting Deputy Warden CLYDE SAGERS	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION FOR AN ORDER COMPELLING DISCOVERY AND
MOTION FOR SANCTIONS**

COME NOW, defendants David Holman, Lawrence McGuigan (deceased), and

Clyde Sagers ("Defendants"), by and through undersigned counsel, and hereby

respectfully request that this Court enter an Order, pursuant to Rule 37(a) and (d) of the

Federal Rules of Civil Procedure, compelling plaintiff to respond to discovery and to

appear for his deposition and ordering plaintiff to pay deposition costs as a sanction for

his failure to appear. In support of their motion, Defendants allege as follows:

1.   On or about October 4, 2004, James Hall ("Plaintiff"), an inmate who was

at that time incarcerated at the Delaware Correctional Center in Smyrna, Delaware,

commenced this action *in forma pauperis* alleging Defendants failed to protect him. (D.I.

1, 2). On July 18, 2005, the Court granted Plaintiff's request to proceed *in forma*

pauperis. (D.I. 6). On August 30, 2005, the Court entered an Order allowing service to

proceed. (D.I. 8).

2.   The Court entered a scheduling order in this matter on September 22,

2006. (D.I. 45). Defendants responded to discovery filed by plaintiff in January of 2007.

(D.I. 47-50). On February 2, 2007, Defendants served Interrogatories and Requests for Production on Plaintiff. (D.I. 53, 54). To date, no response has been received. Defendants noticed Plaintiff's deposition for April 17, 2007. (D.I. 58). Plaintiff did not appear nor contact counsel to state that he would not appear.

2.   Rule 37(a) of the Federal Rules of Civil Procedure provides that a party may move the court for an order compelling discovery and for appropriate sanctions. Rule 37(d) provides specific sanctions for the complete failure to respond to Interrogatories or for the failure of a party to appear at a deposition. It also provides that the Court may require the party failing to act to pay the reasonable expenses caused by the failure.

3.   Counsel for Defendants has made numerous attempts to correspond with Plaintiff regarding the outstanding discovery and to schedule dates for Plaintiff's deposition. (*See* Exhibit "A"). All attempts were made by letter as Plaintiff has not provided a telephone number where he can be reached.

4.   Plaintiff has updated his address with the Court several times. On or about May 15, 2006, he indicated he was moved to the Violation of Probation building in Delaware Correctional Center. (D.I. 38). On July 31, 2006, Plaintiff provided the Court with the following address: 6269 Oxon Hill Road, Apt. B-1, Oxon Hill, MD 20745-3079. On August 16, 2006, Plaintiff filed discovery requests on Defendants and within those requests indicated that the documents were to be sent to Plaintiff at 10904 Hidden Creek Court, Ft. Washington MD 20744.

5.   Counsel for Defendants has sent all filings and correspondence, including the discovery requests, from D.I. 47 forward to both addresses because it is not clear

where Plaintiff is located. Counsel has also indicated in correspondence to Plaintiff that it is his obligation to keep the Court informed of his current address. (*See* Exhibit "A" at p. 3, 4). Plaintiff has not responded to any of counsel's letters nor has he clarified his address with the Court.

6.   Plaintiff also has not responded to counsel's multiple requests to discuss possible deposition dates. (*See* Exhibit "A" at p. 1-2, 4). Absent any communication from Plaintiff, counsel noticed Plaintiff's deposition for April 17, 2007. (D.I. 58). Notice was sent to Plaintiff at both the Oxon Hill address and the Ft. Washington address by certified mail. (*See* Exhibit "B" and D.I. 58). Plaintiff did not appear for the deposition nor did he contact counsel to state he would not appear. (*See* Exhibit "C").

7.   Defendants have already requested an enlargement of 45 days time to complete discovery which was granted by the Court on March 23, 2007. The new discovery deadline is May 4, 2007. Despite this extra time, Plaintiff has still not responded to discovery. As of this date, the last actions Plaintiff has taken in this litigation is an address update with the court on July 31, 2006 and discovery requests sent to Defendants on August 16, 2006.

8.   Due to Plaintiff' failure to respond, Defendants have incurred the expense of drafting the motion for enlargement of time, scheduling a deposition, and now filing this motion to compel. Defendants have also had to pay court reporter fees for the scheduled deposition of Plaintiff which Plaintiff failed to attend. (*See* Exhibit "D").

WHEREFORE, pursuant to Federal Rules of Civil Procedure 37(a) and (d), Defendants apply to this Court for an order compelling Plaintiff to respond to discovery within 30 days, ordering Plaintiff to appear for a deposition, and requiring Plaintiff to pay

the costs of the deposition for which Plaintiff did not appear within 30 days.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, ID#4667
Deputy Attorney General
Department of Justice
State of Delaware
Carvel State Office Building
820 North French Street, 6th fl.
Wilmington, DE 19801
(302) 577-8400

Dated: April 27, 2007   *Attorney for Defendants*

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FOR THE DISTRICT OF DELAWARE

JAMES HALL,	)	
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Acting Deputy Warden Clyde Sagers	)	
	)	
Defendants.	)	

7.1.1 CERTIFICATION OF COUNSEL

Counsel for the Defendants files this certification in compliance with Rule 7.1.1

of the Local Rules of Civil Procedure and certifies that:

1.   Plaintiff is unable to be reached by telephone as he has not provided

counsel with a telephone number. Plaintiff has not responded to any of counsel's

attempts to communicate through correspondence.

3.   Accordingly, counsel assumes that the motion is opposed.

DEPARTMENT OF JUSTICE
STATE OF DELAWARE

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, ID#4667
Deputy Attorney General
Department of Justice
State of Delaware
Carvel State Office Building
820 North French Street, 6th Fl.,
Wilmington, DE 19801
(302) 577-8400

Dated: April 27, 2007   *Attorney for Defendants*

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DAVID HOLMAN, Deputy Warden	)	
LAWRENCE MEGUIGAN, and	)	
Acting Deputy Warden Clyde Sagers	)	
	)	
Defendants.	)	

O R D E R

This _____ day of _____, 2007,

WHEREAS, Defendants having requested an order compelling Plaintiff to

respond to discovery within thirty (30) days, compelling Plaintiff to appear for a

deposition, and ordering Plaintiff to pay fees as a sanction for his failure to attend his

depositon; and

WHEREAS, there being good cause shown for the granting of such motion;

IT IS HEREBY ORDERED, that Defendants' Motion For An Order Compelling

Discovery and Motion For Sanctions be granted and the Plaintiff shall respond to

discovery and communicate with counsel for Defendant to schedule Plaintiff's deposition

within thirty (30) days. Plaintiff shall also be required to pay the costs of the deposition,

in the amount of $102.95, for which Plaintiff did not appear within thirty (30) days.

_____

The Honorable Gregory M. Sleet

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2007, I electronically filed *Defendants' Motion*

for Order Compelling Discovery and Motion for Sanctions with the Clerk of Court using

CM/ECF. I hereby certify that on April 27, 2007, I have mailed by United States Postal

Service, the document to the following non-registered party:

James Hall
Pro Se
6269 Oxon Hill Road
Apt. B-1
Oxon Hill, MD 20745-9079

    and

10904 Hidden Creek Court
Ft. Washington, MD 20744

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos (I.D. 4667)
Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
stacey.xarhoulakos@state.de.us

Dated: April 27, 2007   *Attorney for Defendants*